

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TruePosition, Inc.,)	
)	
Plaintiff/)	
Counterclaim-Defendant,)	
)	Civil Action No. 05-00747(SLR)
v.)	
)	
Andrew Corporation,)	
)	
Defendant/)	
Counterclaim-Plaintiff.)	
_____)	

TRUEPOSITION’S PROPOSED VERDICT FORM

We, the jury, unanimously find as follows:

I. INFRINGEMENT

1. Has TruePosition proven by a preponderance of the evidence that Andrew has literally infringed any asserted claim of U.S. Patent No. 5,327,144 (144 Patent)?

“Yes” is a finding for TruePosition. “No” is a finding for Andrew.

(A) Claim 1 Yes_____ No_____

(B) Claim 22 Yes_____ No_____

(C) Claim 31 Yes_____ No_____

2. Has TruePosition proven by a preponderance of the evidence that Andrew infringed any asserted claim of the 144 Patent under the doctrine of equivalents?

“Yes” is a finding for TruePosition. “No” is a finding for Andrew.

(A) Claim 1 Yes_____ No_____

(B) Claim 22 Yes_____ No_____

(C) Claim 31 Yes_____ No_____

3. If you found that Andrew infringed any claim of the 144 Patent, has TruePosition proven, by clear and convincing evidence, that Andrew’s infringement was willful?

“Yes” is a finding for TruePosition. “No” is a finding for Andrew.

Yes_____ No_____

II. DAMAGES

Answer the following question only if you find any of the 144 patent claims infringed.

4. What is the total amount of damages that should be awarded to TruePosition?

\$ _____

III. DEFENSES

Answer the following questions only if you find any of the 144 patent claims infringed.

FRAUD

5. Has Andrew proven by a preponderance of the evidence that TruePosition defrauded Andrew, or in other words, has Andrew proven each and every one of the following elements by a preponderance of the evidence:

a. TruePosition did not declare its 144 Patent as a patent believed to be considered essential to an ETSI standard.

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

b. TruePosition had a legal duty to declare its 144 Patent as a patent believed to be considered essential to an ETSI standard.

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

c. TruePosition knew or should have known that it should have declared its 144 Patent as a patent believed to be considered essential to an ETSI standard (or acted with a reckless disregard of the truth).

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

d. TruePosition intended to induce Andrew into acting or refraining from acting by not declaring its 144 Patent as believed to be considered essential to an ETSI standard.

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

- e. Andrew acted or refrained from acting in reliance on the fact that TruePosition did not declare its 144 Patent as believed to be considered essential to an ETSI standard.

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

- f. Andrew’s reliance was justifiable.

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

- g. Andrew suffered damage as a result of its reliance.

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

PROMISSORY ESTOPPEL

6. Has Andrew proven by clear and convincing evidence that TruePosition is promissorily estopped from asserting the 144 Patent against Andrew, or in other words, has Andrew proven each and every one of the following elements of promissory estoppel by clear and convincing evidence?

- a. TruePosition made a promise to Andrew that TruePosition would not assert the 144 Patent against Andrew;

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

- b. TruePosition intended to induce Andrew's action or inaction based on the promise;

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

- c. Andrew reasonably relied on the promise;

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

- d. Andrew was injured by its reliance.

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

We, the jurors, by signing below, indicate our unanimous verdict.

Jury Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

TruePosition objects to the submission of equitable estoppel, implied license and unclean hands to the jury. However, should the court decide to send these issues to the jury in an advisory capacity, TruePosition proposes the following verdict form. Should the Court decide to send these issues to the jury in an advisory capacity, TruePosition also requests that the jury also be instructed concerning TruePosition's unclean hands defense to Andrew's claims of fraud, equitable estoppel, implied license, promissory estoppel and unclean hands.

EQUITABLE ESTOPPEL

7. Has Andrew proven by a preponderance of the evidence that TruePosition is equitably estopped from asserting the 144 Patent against Andrew, or in other words, has Andrew proven each and every one of the following elements by a preponderance of the evidence?

a. TruePosition, through misleading words, conduct or silence, led Andrew to reasonably infer that TruePosition did not intend to enforce the 144 Patent against Andrew.

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

b. Andrew reasonably relied on TruePosition's conduct.

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

c. Due to Andrew's reliance, Andrew will be materially harmed if TruePosition is allowed to proceed with its infringement claim.

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

IMPLIED LICENSE

8. Has Andrew proven by a preponderance of the evidence that TruePosition impliedly granted Andrew a license to the 144 Patent or, in other words, has Andrew proven each and every one of the following elements by a preponderance of the evidence?

a. A relationship existed between Andrew and TruePosition;

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

b. Within that relationship, TruePosition granted to Andrew a right to use its 144 Patent;

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

c. TruePosition received valuable consideration for that grant;

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

d. TruePosition’s statements and conduct created the impression that TruePosition consented to Andrew using the 144 Patent; and

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

e. TruePosition denied that Andrew had an implied license.

“Yes” is a finding for Andrew. “No” is a finding for TruePosition.

Yes_____ No_____

TRUEPOSITION'S UNCLEAN HANDS

9. Has Andrew proven by clear and convincing evidence that TruePosition is barred from asserting the 144 Patent against Andrew by the doctrine of unclean hands or, in other words, has Andrew proven each and every one of the following elements by clear and convincing evidence?

a. TruePosition's conduct was inequitable or in bad faith.

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

b. TruePosition's conduct is directly related to the subject matter of its claims.

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

c. Andrew has clean hands, or in other words, Andrew's conduct was in good faith.

"Yes" is a finding for Andrew. "No" is a finding for TruePosition.

Yes_____ No_____

ANDREW'S UNCLEAN HANDS

10. Has TruePosition proven by clear and convincing evidence that Andrew is barred from asserting any defense to TruePosition's claim of infringement because of unclean hands or, in other words, has TruePosition proven each and every one of the following elements by clear and convincing evidence?

- a. Andrew's conduct was inequitable or in bad faith.

"Yes" is a finding for TruePosition. "No" is a finding for Andrew.

Yes_____ No_____

- b. Andrew's conduct is directly related to the subject matter of its claims.

"Yes" is a finding for TruePosition. "No" is a finding for Andrew.

Yes_____ No_____

- c. TruePosition has clean hands, or in other words, TruePosition's conduct was in good faith.

"Yes" is a finding for TruePosition. "No" is a finding for Andrew.

Yes_____ No_____